

## **SPECIAL MEETING**

### **STATE PROPERTIES COMMITTEE**

**Tuesday, June 28, 2005**

**A Special Meeting of the State Properties Committee was called to order at 8:35 A.M. by Chairman Jerome F. Williams. Other members present were Genevieve Allaire-Johnson, Esquire, representing the Department of Attorney General, Mr. Robert Griffith, representing the Department of Administration, and Mr. Robert Kay, Public Member. Also in attendance were, Louis DeQuattro, Esquire and Mr. John Ryan, from the Department of Administration; Mr. Brian Peterson from the Division of Motor Vehicles; Michael D. Mitchell, Esquire, from the Department of Transportation, Mary E. Kay, Esquire and Ms. Lisa Primiano, from the Department of Environmental Management; Mr. John W. Boehnart, on behalf of the City of Providence; Sean Coffey, Esquire, on behalf of Promet and Tidewater Realty; Ms. Darlene L. Walsh and Messrs. John DiTomasso and Charles Dolan, from the Department of Motor Vehicles; Thomas Coffey, Esquire from the Fire Safety Code-Board of Appeals and Review; Jametta Alston, Esquire from the Office of the Child Advocate; and, Mr. John Reilly, for David Tapalian.**

**ITEM A – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT – A request was made by the Department for final approval and signatures on Quit-claim Deed for the conveyance of property at 242 Allens Avenue, Providence.**

**The Chair, M. Williams stated the Committee would hear the presentation made by the Department and discussion with the**

**Committee, and then open the matter up for comments.**

**Attorney Mary Kay stated the Department is requesting signatures on documents for the sale of the property located at 242 Allens Avenue, Providence. The Department has several documents. The Department signed a Purchase and Sale Contract on this property several months ago and has since sent out notice to the City of Providence, when that was signed in May of this year. The City of Providence has prior right of first refusal under Statute 37-7-3 of the Rhode Island General Laws . The Department notified them of the terms and conditions of the sale of the property. They had 30 days in which to respond. The basic terms and conditions were a purchase price of \$1,026,780.00, which was based on a bid price by Promet and that exceeded the State's appraisal on the property. The property is to be sold as is and subject to an Environmental Land Use Restriction, because of prior uses of the property, and the closing was to occur no later than June 30, 2005.**

**On June 17 the Department received a formal letter from Mayor Cicilline, informing the Department that the City was going to move forward to exercise its right to purchase this piece of property and the City passed a Resolution. The City agreed to purchase the property on the same terms and conditions on which it was offered to Promet by that Purchase and Sale Contract. Initial correspondence was received from the City on June 14 and was followed up by a letter dated June 17. The City of Providence is moving ahead to close on this with the Providence Redevelopment Agency. Mr. John Boehnart distributed an Opinion Letter which states that the City may**

close through the Providence Redevelopment Agency as its agent.

This Opinion Letter was presented at the request of the Department which had asked for the opinion as to whether or not the property may be purchased by the PRA on behalf of the City.

Ms. Kay stated there are three documents that the Department is bringing forth for signatures in preparation for a closing. The first one is a Quit-claim Deed to the Providence Redevelopment Agency. The second one is an Environmental Land Usage Restriction. The third document is an Assignment and Assumption of Lease. The Department also provided Certificates of Authority from the City of Providence authorizing the signing of the documentation.

Ms. Kay gave a background of the actions by the Department in connection with this piece of property to conform with Rhode Island General Laws 37-7-3. The land was condemned on March 11, 1911 pursuant to Public Law 1910 Chapter 568. The owners of the property that was condemned were Henry L. Aldrich and James Tiffany and the Estate of James Tiffany. James Tiffany had actually predeceased the condemnation August 23, 1907. The Department was able to locate the last known addresses for James Tiffany and James Aldrich, and on August 17, 2004 sent Certified Letters to those last known addresses, which were returned to the state as not being able to be delivered. The Department worked with the Rhode Island Historical Society, obtained copies of the obituaries of each of the now deceased owners of the property and made an attempt to locate the direct heirs and those attempts were unsuccessful. In an abundance of caution, on August 20, 2004, the Department ran a notice in the

Providence Journal. The Department has an Affidavit of Publication noting its intent to surplus this property and notifying the former property owners and heirs of Henry L. Aldrich, James Tiffany and the Estate of James Tiffany. No response was received by the Department in this attempt to locate any persons that may have had an interest in the property. Following those actions, the Department began working in close communication with the City of Providence and with the current lease holder's interest of the property to move forward to obtain an appraisal of the property and to go out for a public bid, thinking that would be the way the State could derive the highest value for the property. The bids went out and only two bids were received. One from Promet, the lessee of the property and another much lesser bid was received from New England Stone. At that point, the Department returned to the State Properties Committee and received permission to negotiate a Purchase and Sale Contract with the high bidder. The Department proceeded to negotiate the Purchase and Sale Contract and the Environmental Land Use Restriction which was the terms and condition of the bid proposal and the Department was successful in negotiating the Purchase and Sale Contract in May of this year. Following that, the Department provided the City with a formal notice of the exact terms and conditions that had been reached. That brings the Department to the conclusion of where it is now, with the City exercising its statutory right to purchase this property pursuant to Rhode Island General Laws 37-7.

The Chair, Mr. Williams inquired how notice was provided to the City.

**Ms. Kay responded that it was by certified mail. He then asked if there were any questions from the Committee relative to the process used on the appraisal, the bid process, the notification to the City or the response from the City.**

**Ms. Allaire Johnson asked the date of the formal notification to the City that was sent by certified mail outlining the terms and conditions as that accepted in the bid. Ms. Kay responded May 18, 2005. Ms. Allaire Johnson then asked the date that the City notified. Ms. Kay stated there were two dates. Their initial response that they would be accepting was in a letter from Mayor Cicciline dated June 14, 2005 and that was followed by a letter from Mayor Cicciline dated June 17, 2005 with a copy of the City Council Resolution attached.**

**Mr. Kay questioned the notification in the newspaper and asked if the Department just used the Providence Journal alone. Ms. Kay responded that is the only paper used and that it is the general paper of circulation in Rhode Island and is the one that the Department of Transportation uses also. Mr. Kay also inquired about the uses of the property. Ms. Kay stated the use will be governed in the future. It is governed by a Lease Agreement and the Lease Agreement basically governs it. It is used as a shipyard essentially. That restriction will remain in place because the Lease will follow the property. There is an environmental land use restriction which will go on to the property and that will be recorded prior to the recording of the Deed. Basically that says that the use of the property cannot be used for residential use without going through a process through the Department which would require cleanup of the property to a certain standard that could**

accommodate residential use.

Mr. Williams referred to a letter received June 27 from David C. Tapalian, Esquire relative to the assignment of certain rights of Abigayle L. Aldrich. He inquired about the research done on this letter and the relevance of the request made by Mr. Tapalian.

Ms. Kay stated the Department was delivered a letter. It was delivered to the State Properties Committee, Michael Sullivan, Acting Director and Ms. Kay stating that an heir of Henry Aldrich and Abigayle L. Aldrich of Warwick was exercising the right under the Statute to purchase the property on the same terms and conditions. The Department looked to several opinion letters that had been obtained by the Department of Transportation in the past, and those opinion letters state the property can be offered back to the prior property owner "if living". The Department has death records of both of the private property owners and it is the Department's opinion that there is no right of heirs of it. Based on the Department's research on Mr. Aldrich's heirs and interest of the property and based on his obituary in the Providence Journal and research that the Department did with the Rhode Island Historical Society, the Department does not believe that this is a valid claim. Mr. Kay inquired if there is a time element. The Department responded the heirs have a 30 day period under the initial Statute, and the Department would have expected that to have come out of the original notice that was sent and the public notice advertising in the newspaper. The heirs did not come forward within that time frame.

Ms. Allaire Johnson stated she has looked at this issue before. It has

come up a number of times before the State Properties Committee over the years. She stated she would agree with the Department's representations that the heirs who have come forward this time do not meet the statutory requirements based on the "if living" language, but also that they did not exercise their rights within that 30 days as required under the statute. Based on that, she would concur with the Department's position that it is not a valid claim.

Mr. John W. Boehnart spoke to the Committee and stated he agreed with everything that Attorney Mary Kay had said and the opinion expressed with regard to the statutory right. He said he would note under the statute, the relevance of the heirs is only in the event that the state makes the election to offer the property back to the party from whom it was condemned or their heirs, successors and assigns and in that case, they have to consent to accept the property back. He went on to say, that is the rights the heirs have under the statute, no other rights.

Mr. John W. Boehnart stated that the PRA is ready, willing and able to acquire the property and knows it has to close prior to June 30, 2005 in order to get the money and it is prepared to do that. PRA has signed a Purchase and Sale Agreement and would like to have the Purchase and Sale Agreement on the property and has a \$100,000.00 deposit check.

The Department did not receive the Purchase and Sale Agreement until late yesterday afternoon which did not allow for the review of the Purchase and Sale Agreement by the attorney General's Office and the Department of Administration. There is a Purchase and Sale

Agreement in place with the Department and Promet. The Purchase and Sale Contract the Department received was essentially on the same terms and conditions, so the Department has made the determination that it is going to go forward by having the Deed and the Environmental Land Use Restriction signed, by having the opinion letter of Mr. Benoit that the RPA can move on behalf of the City, and with the notification from the City that they are accepting the property on the same terms and conditions.

Attorney Sean Coffey spoke to the Committee. He represents Tidewater Realty LLC and Promet Marine Services Corporation, a related company. Mr. Coffey stated it was a rather extensive process.

He said one thing that was omitted was a reference to a prior notice that was sent to the City of Providence dated February 14, 2004 and returned under the signature of Thomas Deller on February 17, 2004 indicating that the City of Providence did not have an interest in acquiring the property if Promet were to pursue the acquisition. From that point the property was advertised for bid. He said he did not know whether the City received a copy of the bid specifications or not, however, a number of people responded, a number of people made inquiries and there were only two bidders. Mr. Coffey said Promet bid more than a fair price for the property, in excess of what it otherwise might have been willing to spend considering that there are unknown environmental conditions that may well affect the property given what “we” know of properties located directly to the north. In any event, Promet does have some issues with this transaction. He said “we” have not seen any of the documents, despite the fact a



request had been made in earlier correspondence. He stated, they have not been provided copies of the Purchase and Sales Agreement, the draft Deed, the current ELUR, or the Opinion. Mr. Coffey said they take exception to the PRA exercising this option effectively on behalf of the City. They believe that is a right that is strictly to the City and the PRA is an independent entity and has no role under 37-7-3 in terms of the exercise of this right. They are also taking the position that based on Mr. Deller's earlier advice in February of 2004 that the City has effectively waived its right of first refusal. Mr. Coffey said, in any event, his clients have asked that he deliver a letter to the Department of Environmental Management and to Chairman Jerome F. Williams indicating their readiness to proceed with this transaction and with the closing. In addition, attached to the letter is a copy of a check in the amount of \$1,026,780.00, payable to the General Treasurer, State of Rhode Island. He stated they have always been read, willing and able to proceed. They have already signed the Purchase and Sale Agreement, which was previously approved by the Committee on May 25, 2005 and they are ready to proceed.

Mr. Boehnart stated the Purchase and Sales Agreement that Tidewater signed with the state stated that the agreement would terminate if the City would not waive its rights under the statute. Under the statute there is only one way for the City to waive its rights and that is failure to respond within thirty (30) days notice. He said that the City in fact responded twice during that 30 day period and stated its intention to acquire the property, so the agreement with Tidewater is terminated by its terms. There has been no waiver of the

statutory right because it can only be waived under the statute in one way, and that is failure to respond, and in any event, the letter from Mr. Deller back in February of 2004 is simply a statement of Mr. Deller's intention at the time, and it was not the position of the City of Providence or the RPA. Regarding the authorization of the PRA, they think the legal opinion makes it clear that RPA, under its enabling statute, is an agency and instrumentality of the City of Providence. It can only act upon direction of the City of Providence and the City Council passed a Resolution which authorized the PRA as agent for the City to acquire the property on behalf of the City.

A discussion took place regarding the Statute.

Ms Allaire Johnson made a statement for the Committee's information. The position of the Department of the Attorney General is that under the Statute, the state is required to do certain things in that notification and one of them is send by Certified Mail and the other is to outline the terms and conditions. That was not done in the letter that was previously responded to by the City, and as far as she is concerned, the City was notified on May 18, 2005 appropriately and properly under the Statute when the state sent by Certified Mail and outlined the terms and conditions pursuant to the Statute. She went on to say, from her perspective in reviewing the documents that were submitted to her at this point, the state notified the City under the Statute, and then the City responded within that 30 day time period. Because the statute specifically outlines what has to be done, those steps have to be followed.

Mr. Williams added, in looking at the information that was provided

to the City, the actual terms and conditions of the sale were not known back in 2004. They were known in 2005. He went on to say, the City was properly noticed and the City came forward and advised the State Properties Committee that the City will be coming forward to acquire the property on the same terms and conditions. Mr. Williams stated that any documentation is public documentation and he could get that for Mr. Coffey. He further stated, from his review of the material presented, he believes the City has the right to come forward and they did provide notice within the time frame associated with it, and based on the legal review relative to the Aldrichs', the City has the right to move forward.

Mr. Kay inquired about the usage of the property and asked if that was qualified in the written notification as to the use of the property. Ms. Kay, questioned "to the City" and Mr. Kay responded yes. She stated the property is being sold as is and the property is sold subject to the Environmental Land Use Restriction and the property is sold pursuant to the terms and conditions of the Lease. The Lease provides that it can only be used for certain purposes and the Environmental Land Use Restriction further restricts the property as to what the future use is, even when the Lease has terminated. The Lease expires July 2011 with an option for an additional ten (10) years at a negotiated price.

Mr. John Reilly introduced himself as being present at the request of Attorney David Tapalian. He said several lineal descendants, heirs of either Mr. Tiffany and/or Mr. Aldrich have been identified, live out of state, certainly had no opportunity to receive notice, in a situation

going back 90 years, when a notification was placed solely in the Providence Journal, as opposed to general publication media. Mr. Reilly did not believe there was proper notice to the descendants.

Mr. Williams commented that he believes that DEM tried to identify the heirs and the former owners and that DEM made a valiant effort to try to locate the heirs of the property.

Ms Kay stated that the Department believes it did what was required and went beyond that by working with the Historical Society to try and identify the original owners. The Department went beyond that and advertised in the Providence Journal for persons to come forward and obtained historical obituaries and did a full research of the potential parties that would need to have come forward within that thirty (30) day period.

A Motion was made by Mr. Griffith and seconded by Ms. Allaire Johnson to approve the request of the Department for final approval and signatures on a Quit-claim Deed conveying property at 242 Allens Avenue, Providence, to the Providence Redevelopment Agency and an Assignment and Assumption of Lease between the Department and the Providence Redevelopment Agency. Mr. Robert Kay opposed.

**Passed**

**ITEM B – OFFICE OF THE CHILD ADVOCATE/FIRE SAFETY CODE – BOARD OF REVIEW/–** A request was made by the Department for final approval and signatures on Lease Agreement for space at 272 West Exchange Street, Providence.

Mr. Ryan gave a brief background of this matter. This location was

originally just for the Office of the Child Advocate. Previous to the renewal of the Lease, the Child Advocate informed the Department of Administration they had more space than was needed. The Fire Safety Code/Board of Review was located within the new Division of Capitol Projects and Property Management and the floor plan was being reorganized. There are only three full time employees in the office of the Fire Safety Code/Board of Review and they have been occupying space within the space of the Office of the Child Advocate and this has been working out well. The Lease is for a period of five (5) years. The rent is being split. The Office of the Child Advocate will pay \$51,485.92 annually and the Fire Safety Code/Board of Appeal and Review will pay \$18,754.08 annually, for a total of \$70,240.00. This is all inclusive with utilities. An additional conference room has been secured for the Fire Safety Code/Board of Appeal and Review at no additional cost. The Certificate of Insurance expires June 15, 2005 and a new Certificate will be obtained.

A motion was made by Mr. Griffith and seconded by Mr. Kay to approve the request of the Office of the Child Advocate and the Fire Safety Code – Board of Review for final approval and signatures on Lease Agreement for space at 272 West Exchange Street, Providence. Approval was granted subject to receipt of Certificate of Insurance.

**Passed Unanimously**

**ITEM C – DEPARTMENT OF ADMINISTRATION –** A request was made by the Department for permission to initiate negotiations with highest ranked proposer for new DMV headquarters.

The Department was seeking permission to initiate negotiations with

the highest rated proposal. The Department recently advertised a Request for Proposals for a new Division of Motor Vehicles space. Three proposals were received.

Mr. Brian Peterson gave a presentation on how the Department approached the process. Mr. Peterson explained that this was a very competitive process. The Department was given permission to go out for a ten (10) year Lease all inclusive. There were three (3) bidders who bid on this. The first one was the owner of the building that the DMV is in now, which was bid by the Apex Development Company. The other bidders were SEPE Associates, which is the Cranston Parkade and Platt Realty, which is representing the old "Rojacks" on Plainfield Pike on the Cranston/Johnston line. They all took different approaches. SEPE Associates proposed to build a three story building. They modified it to a two story, although the RPF specifically said the Department preferred a one floor proposal. Apex Development Corporation gave an interesting proposal. Rather than bid the space that the DMV is in, they bid the lower level in the basement. It is a walkout to the river with glass front and mixed parking. The Platt Realty Group bid the former "Rojacks" which is the independent shopping center on Plainfield Pike. Platt Realty Group, with the Cranston location, received 78.6 points; second was Apex Development Corporation with 68.5 points and last was SEPE Associates with 67.8. SEPE Associates, submitted their proposal to construct a brand new building. SEPE did show the Department where it would be and said they could do it in six (6) months. The Department received a tour of their Katherine Gibbs building which

they built. It was a nice facility, but there were concerns about the timing and the price was the highest. The second ranked proposal was Apex Development. Their price was second highest. Some of the things they lost points for was the parking. Platt Realty group did an excellent job. The person who worked on the bid came in, looked at the needs, gave a good floor layout. The architects came up with a good floor plan as to how the flow was going to work to separate the executive offices from the main floor, but to keep an ability to interact with them. That facility has a loading dock with three bays and has secure storage in the back. It has plenty of parking and enough area in the back to have dedicated employee parking and a separate employee entrance. In regards to the evaluation of costs, the low bidder, received the full 20 points on the cost. The other bidders were calculated by taking their price divided by the low price and multiplying by 20. Platt received 20; Apex Development received 18.11, but proposed a re-negotiation in the fifth year. They were supposed to bid a ten year price. Apex said the price was fixed for five years and negotiable after that. outcome. The third was SEPE Associates with 17.4. The Department did the analysis on a ten year cost of ownership. Platt did an excellent job showing how they arrived at their cost number. Platt added the rent and the utilities, applied an inflation factor and then cost averaged it back to come up with a flat price. Mr. Petersen talked about the location for serving the state. The Cranston location scored higher on the basis that 70% of the population of the state live within a twenty minute drive of the location in Cranston. The proposer did a good job of laying out a

population map. He explained the access to the highway and the availability of accessing the location by bus. He went on to say, you would have the ability to get from any City or Town into Providence to take the bus to the location and that was a big selling point.

Mr. Williams asked Mr. Peterson to outline the components of the analysis that was done. Mr. Petersen said that the location, as stated earlier, serves the citizenship well. He explained in regard to analyzing the property, the Evaluation Committee looked at the location, how well it served the citizens in the state. The Evaluation Committee looked at the square footage; everyone received the full points on that. It looked at the quality of space, how the space looked, how did it appear; the flow of the work; the ability of the customers to come in. One level was again preferred by the state. Parking was also evaluated along with at RIPTA access. While they all received the points for that, there was superior RIPTA access with the Cranston location. Highway access was also looked at. All three locations had good highway access. Storage was looked at. Everyone received the full points, but Platt Realty received the most points because of the loading docks, the three bays, the ability to have the secure storage. The ability to meet the deadline was looked at. The Department did not have faith in the brand new building being complete in six months.

Mr. Ryan displayed the floor plan from the Platt Realty Group and Mr. Peterson gave a description of what was in the plan. He stated that Platt Realty did a really nice job in laying this out and it is almost a perfect footprint of the building. Mr. Williams asked if the layout was



done from a customer service standpoint, because that is really key to what the Department is trying to do. Mr. Peterson explained, that from a customer service standpoint, the plan is to use color coding. Every place that a customer needs to go to with the exception of investigation can be seen from the front and would be color coded, with proper signage. He stated the architects did a nice job and that they really listened to what the needs are. There will be a large sign on the front of the building and on the mall signage that is out on the street on Plainfield Pike.

Mr. Griffith asked about the circulation pattern. Will the current circulation pattern for the mall accommodate the kinds of traffic that is anticipated and he was told it was well planned.

Mr. Griffith inquired if the Department is budgeted for this move and was told yes.

Mr. Kay asked if the location in Pawtucket was going to be completely eliminated and asked if the Department looked at the fact of economic development and how that was going to effect the City of Pawtucket. He was told the Department did not see that as an issue.

Mr. Ryan stated that when the Department approached the State Properties Committee to obtain permission to advertise for RFP, the Department is looking at the state's best interest, customer service.

Mr. Petersen stated that the Department has been working with the Legislature, and have been working with the Governor to improve service.

Mr. Griffith stated, with all due respect, and as a Pawtucket resident, he can only speculate as to why Apex is offering the basement as

opposed to the current location. Either they are going to expand back to themselves into that space or they have alternatives and would also point out that the former building on Main Street is going to be occupied by another tenant, so while we have to be aware of the impact of the state coming and going in a particular City or Town, the larger interest is in the benefit to the citizenry.

Mr. Kay stated it is a very excellent proposal, he is looking at the total aspect.

Mr. Ryan added to what Mr. Griffith said. Mr. Gates (Apex) has stated he has other tenants lined up to the main level, so as far as economic impact, Pawtucket will be all right with whoever is there. Discussion took place. The Department stated this is a very good selection process, because the person who won the most points also had the lowest price.

Mr. Williams said that when the process was begun, the primary object is for customer service. He went on to say, as Mr. Petersen stated, this is something that has been going on for the last couple of years to improve customer service and think of the customer as opposed to what the state's needs are. He said, let's think of what the customer's needs are.

Mr. Williams inquired about the proposal made by Sepe and asked about the land that was being proposed to construct the building. His understanding is that this was not the site of the Trolley Barn. Mr. Ryan stated they were told it was going to be between the Katherine Gibbs School and the new Cranston Police Station on the corner of Cranston and Garfield Streets. He went on to say, Sepe could have

taken care of the parking concerns the Department had, but with the Katherine Gibbs parking and the Cranston Police Station parking, there were some concerns about parking. Also, another issue with this proposal is that the registrar's office would be separate from the customers which is not a good idea.

Mr. Ryan added, obviously customers are the main concern, but the Department wants to keep the employees happy. He referred to the proposal made by Platt Realty describing the area that will allow bringing in natural light for the employees.

A motion was made by Mr. Griffith and seconded by Ms. Allaire Johnson to approve the request of the Department for permission to initiate negotiations with highest ranked proposer for new DMV headquarters.

**Passed Unanimously**

With the exception of Item "A", in which Mr. Robert Kay opposed, all matters presented to the Committee were approved by all present. There being no further business to come before the Committee, the meeting adjourned at 9:45 A.M.

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**Anne L .Lanni, Executive Secretary**